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304 NLRB No. 51

D-2199
Southfield, MI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ROCFORM CORP.

and

Case 7-CA-31646

DETROIT MILLMEN'S LOCAL 1452,
UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, AFL-CIO

August 28, 1991

DECISION AND ORDER

By Members Devaney, Oviatt, and Raudabaugh

Upon a charge filed by Detroit Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, the Union, on March 11, 1991, the General Counsel of the National Labor Relations Board issued a complaint on April 19, 1991, against Rocform Corp., the Respondent, alleging that it has violated Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On June 13, 1991, the General Counsel filed a Motion for Default Judgment and a memorandum in support, with exhibits attached. On June 18, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On June 25, 1991, the Respondent, by its executive vice president, filed a response to the order transferring the proceeding to the Board and Notice to Show Cause. The Respondent stated that it failed to file an answer to the complaint because it did not deny any of the charges in the complaint. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the complaint shall be deemed to be admitted true and may be so found by the Board.'' Further, the undisputed allegations in the Motion for Default Judgment disclose that by certified letter dated May 10, 1991, counsel for the General Counsel informed the Respondent that unless an answer was filed by May 24, the General Counsel would file a Motion for Default Judgment. The Respondent has not filed an answer to the complaint and the Respondent in its response to the Notice to Show Cause states that it has not filed an answer to the complaint because the allegations in the complaint are not denied.

As there is no answer to the complaint, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

Findings of Facts

I. Jurisdiction

Rocform Corp., the Respondent, is a Michigan corporation with its principal office and place of business in Southfield, Michigan. During the calendar year ending December 31, 1990, which period is representative of its operations during all times material, the Respondent's gross revenues exceeded $1 million. During the same time period, the Respondent, in the course and conduct of its business operations, purchased and caused to be transported and

delivered to its place of business, supplies, goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to its place of business in Southfield, Michigan, directly from points located outside the State of Michigan. We find that the Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Charging Party Union is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. Representation

Since February 1990, the Union has been the designated, and has been recognized by the Respondent, as the exclusive collective-bargaining representative of the employees in the following unit:

> All form builders and material handlers employed by the Respondent at its facility located at 22180 West Eight Mile Road, Southfield, Michigan, excluding office clerical employees, guards, and supervisors as defined in the Act.

At all times material the Union, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of the unit employees for purposes of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment.

Recognition of the Union as the exclusive representative of the unit employees is embodied in a collective-bargaining agreement which is effective by its terms for the period from February 9, 1990, through February 9, 1993.

B. Refusal to Bargain

Since about September 11, 1990, and continuing to date, the Respondent has legally deducted union dues from employees' wages and has failed to remit these dues to the Union. Since about September 11, 1990, and continuing to

date, the Respondent has failed to make fringe benefit contributions required under the terms of its collective-bargaining agreement with the Union.

The Respondent took the actions described above without prior notice to and/or bargaining with the Union. By the acts described above the Respondent unilaterally modified the current collective-bargaining agreement without complying with the provisions of Section 8(d) of the Act, and we find that by its acts and conduct described above, and by each of these acts, the Respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act in violation of Section 8(a)(1). Further, we find by its acts and conduct described above, and by each of these acts, the Respondent did refuse to bargain collectively and is refusing to bargain collectively with the representative of its employees in violation of Section 8(a)(5).

Conclusions of Law

By ceasing to remit to Detroit Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, dues legally deducted from the pay of unit employees and by ceasing to make fringe benefit contributions on behalf of employees of the Respondent employed in the unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

We have found that the Respondent violated Section 8(a)(5) of the Act by failing to make fringe benefit contributions and by failing to remit dues

legally deducted from the pay of unit employees. We shall order the Respondent to make the funds whole and to make the fringe benefit contributions that it owes to the appropriate funds [1] and to remit to the Union the dues deducted from the pay of unit employees. We shall also order the Respondent to make the unit employees whole for any losses they may have suffered as a result of its failure to make the fringe benefit contributions, Kraft Plumbing & Heating, 252 NLRB 891 (1980). All payments to the Union and the employees shall be made with interest as provided in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Rocform Corp., Southfield, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Detroit Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, as the exclusive bargaining representative of the employees in the appropriate unit by unilaterally changing the wages, hours, and other terms and conditions of employment by:

(i) Failing to make contractually required fringe benefit contributions.

(ii) Failing to remit to Detroit Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL--CIO dues legally deducted from the pay of unit employees.

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[1] We leave to the compliance stage the question whether the Respondent must pay any additional amounts into the funds in order to satisfy this ''make-whole'' remedy. Merryweather Optical Co., 240 NLRB 1213 (1979).

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act.

(a) Make the fringe benefit funds whole and make the contractually required fringe benefit contributions as set forth in the remedy section of this decision.

(b) Remit to Detroit Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, with interest, dues legally deducted from the pay of unit employees in the manner set forth in the remedy section of this decision.

(c) Make whole unit employees for any loss of benefits they may have suffered from the Respondent's failure to transmit fringe benefit contributions in the manner set forth in the remedy section of this decision. The appropriate unit is:

> All form builders and material handlers employed by Respondent at its facility located at 22180 West Eight Mile Road, Southfield, Michigan, excluding office clerical employees, guards, and supervisors as defined in the Act.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facilities in Southfield, Michigan, copies of the attached notice marked ''Appendix.''[2] Copies of the notice on forms provided

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[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL (Footnote continued)

by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. August 28, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Detroit Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, as the exclusive bargaining representative of the employees in the appropriate unit by unilaterally changing the wages, hours, and other terms and conditions of employment by:

Failing to make contractually required fringe benefit contributions.

Failing to remit to Detroit Millmen's Local 1452 United Brotherhood of Carpenters and Joiners of America, AFL--CIO dues legally deducted from the pay of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to Detroit Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, dues, with interest, legally deducted from the pay of unit employees.

WE WILL make whole our employees in the unit by making all contractually required fringe benefit contributions that have not been paid, and by reimbursing our employees in the unit for any expenses, plus interest, ensuing from our failure to make the contractually required payments. The appropriate unit is:

All form builders and material handlers employed by us at our facility located at 22180 Eight Mile Road, Southfield, Michigan, excluding office clerical employees, guards, and supervisors as defined in the Act.

ROCFORM CORP.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313--226-3219.